IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6684 of 2007()

CRIME NO.402/07 OF CHALAKUDY POLICE STATION

: PETITIONERS/ACCUSED 4 TO 6

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1. JOBY, S/O.DEVASSYKUTTY,
   PAYYAPILLY HOUSE, POTTA DESOM & VILLAGE,
   MUKUNDAPURAM TALUK.

2. SHIYAZ, S/O.MUHAMMED RASHEED,
   BUNGALOW PARAMBIL, KIZHAKKE CHALAKUDY VILLAGE,
   MUKUNDAPURAM TALUK.

3. RIYAZ, KOMBIDI VEETTIL,
   POTTA VILLAGE, MUKUNDAPURAM TALUK.

4. LINTO, S/O.VARKEY,
   NJERITHAMPILLY VEETTIL, POTTA VILLAGE,
   MUKUNDAPURAM TALUK.

BY ADV. SRI.C.HARIKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6684 of 2007

Dated this the 13th day of November, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 4 to 6. They face allegations for offences punishable, inter alia, under Section 452 I.P.C and Section 27 of the Arms Act r/w 149 I.P.C. The allegations against the petitioners is that they were members of an unlawful assembly of persons who, with the intention of committing the offences and after making preparations, trespassed into a bar hotel and indulged in wanton acts of violence. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. In fact, they have settled the dispute with the defacto complainant. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioners. According to the learned Public Prosecutor , there

has been no bona fide settlement of the dispute. Even if it be assumed that there are any such settlement, the same cannot be legally reckoned as sufficient reason to invoke the discretion under Section 438 Cr.P.C in this crime, where the major offence alleged is a non compoundable offence.

4. I am satisfied that there is merit in the opposition by the learned Public Prosecutor. It is for the petitioners to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-